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June 1, 2015

VIA E-FILING AND FACSIMILE

George P. Velastegui
Regional Director
National Labor Relations Board
Region 32
1301 Clay St – Suite 300N
Oakland, CA 94612-5221
Facsimile: (510) 637-3315

RE FedEx Freight, Inc.
Case No. 32-RC-144041

Dear Regional Director Velastegui:

FedEx Freight, Inc. (FedEx or the Employer) hereby requests/moves for a postponement of the June 8, 2015 hearing re: objections in the above-captioned matter until the charges pending in Case Nos. 32-CA-146666, 148787, 149384, 149386, 149389, 149422, 149988 and 149994 have been fully investigated and the Region has made a merit/no merit determination on them. This request/motion is predicated on the following:

1. Holding a hearing on June 8 as now scheduled will be prejudicial to the Employer and could unfairly impede the presentation of the Employer's evidence because the pendency of the aforementioned charges presents the Employer and its counsel with a serious and what appears to be a potentially insoluble ethical dilemma. On one hand, as officers of the court representing the Employer, we are obliged to do everything within the bounds of the law and ethics to advance FedEx's legitimate interests including interviewing potential employee witnesses and preparing those witnesses we deem material for testimony at the objections hearing. But, on the other hand, our ability to do so is chilled by the pending charges and the threat of our client being charged with yet further allegations of Johnnie's Poultry violations should the Region conclude that our otherwise permissible preparation, which should include the questioning of employees, has occurred in an atmosphere that is not free from union animus or that it is accompanied by significant alleged unfair labor practices that may render the preparatory conversations with employees arguably coercive. We should not be unnecessarily placed in this uncertain ethical position. Nor should our client be placed at risk of potential

liability and its due process rights compromised simply because the Region is anxious to move this R case, particularly when there is an adequate alternative – completing the Region’s ULP charge investigation first. As a former field attorney and a long-time practitioner before the Agency, I understand the need to process cases in a timely fashion. But sometimes, especially in cases like the instant, speed for the sole sake of speed becomes the enemy of procedural due process. Here, other than a desire to advance this R case to a conclusion, there is no reason for forcing this matter to a hearing on June 8th. Given the ethical and due process concerns articulated here and because no genuine or actual harm can be shown to the parties by the requested postponement of hearing in this matter, we respectfully ask that the notice calling for the hearing to take place on June 8th be vacated and the hearing on the objections in this matter be reset for a later and yet to be determined date following the Region’s investigation of the aforesaid unfair labor practice charges.

2. From its charge in Case No. 32-CA- 148787 and based on the comments of the Region’s investigator, it is clear that the Union contends that the nature of the Employer’s objections (all of which you have set for hearing) and the substantiality of its evidence in support thereof is in some way substantive proof our client’s wrongful conduct or of its wrongful intent in the other pending ULP charges. Thus, the Union (and the Region, should it go to complaint,) may later seek to link the objections hearing to the pending charges. Assuming arguendo, the validity of the Union’s claim and there is a linkage between the R and C cases, then piecemeal litigation of those intertwined cases is inappropriate and highly prejudicial. Indeed, while we reject the Union assertions as being without any basis in fact or in law, we also think it unfair to conduct the R case hearing at a time when our client’s ability to put on its very best case may be compromised by virtue of the pending charges if that proof or the purported lack thereof may, itself, later be cited as adverse evidence in subsequent C cases and, thus, may have a potentially material impact on the outcome of the pending unfair labor practice cases. For this reason as well, we urge that the June 8th hearing be vacated, pending the completion of the ULP charges’ investigation.

3. Due process requires that a fact finder, in this case, the hearing officer, be a neutral and totally disinterested third party who is unbiased and immune to even the appearance of command influence. The investigation of these charges is ongoing and the Region may soon take the Union’s side in some or all of its charges. If a complaint issues in the pending charges, it will be because the Region has authorized that issuance and become adverse to our client. At the same time, however, it will be the Region’s employee who will hear the Employer’s objections. Because of the adversity that appears to be developing between our client and your office, there is a substantial question as whether the Region can supply the parties with a neutral fact-finder to preside over the June 8th hearing, to hear and consider the evidence and to issue a report on objections, who can also meet this most fundamental due process requirement. For this reason as well, I ask that the June 8th hearing be put over and that the objection in this R case be set for hearing after the investigation of the C cases is concluded.

I have made Costa Kerestenzis, counsel for the Union, aware of this postponement request; Mr. Kerestenzis is not in agreement.

Given the closeness of the hearing date in this matter, I would appreciate your prompt action on this request/motion.

Thank you.

Very truly yours,

JACKSON LEWIS P.C.



Mark S. Ross

KNM/cc

cc: Costa Kerestenzis, Esq. (via e-mail to ckerstenzis@beesontayer.com)
Cynthia Rence (via e-mail to Cynthia.Rence@nlrb.gov)
Nicolas L. Tsiliacos (via e-mail to Nicholas.Tsiliacos@nlrb.gov)

CERTIFICATE OF SERVICE

Case Name: FedEx Freight, Inc.

Case No.: 32-RC-144041

I, Cheryl Cleary, declare that I am employed with the law firm of Jackson Lewis P.C., whose address is 50 California Street – 9th Floor, San Francisco, CA 94111; I am over the age of eighteen (18) years and am not a party to this action.

On June 1, 2015, I served the attached **letter moving for a postponement of hearing, dated June 1, 2015, from Mark S. Ross to the Regional Director**, in this action as follows:

Costa Kerestenzis, Esq.
Beeson, Tayer & Bodine - APC
520 Capitol Mall, Suite 300
Sacramento, CA 95814
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ckerestenzis@beesontayer.com
Petitioner - Legal Representative

[✓] **BY ELECTRONIC MAIL (EMAIL):** I attached a full, virus-free pdf version of the document to electronic correspondence (e-mail) and transmitted the document from my own e-mail address, clearvc@jacksonlewis.com, to the persons at the e-mail addresses above. There was no report of any error or delay in the transmission of the e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 1, 2015, at San Francisco, California.


Cheryl Cleary